

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #7	CCRB Case #: 201906955	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/23/2019 12:37 PM	Location of Incident: 154th Street and 134th Avenue	Precinct: 113	18 Mo. SOL 1/23/2021	EO SOL 9/9/2021	
Date/Time CV Reported Thu, 07/25/2019 7:13 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/06/2019 11:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Bryan Cullen	02427	945363	113 PCT
2. POF Connie Duncan	14394	941689	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Bryan Cullen	Abuse: Sergeant Bryan Cullen stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POF Connie Duncan	Abuse: Police Officer Connie Duncan stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POF Connie Duncan	Abuse: Police Officer Connie Duncan frisked § 87(2)(b)	
D.POF Connie Duncan	Abuse: Police Officer Connie Duncan searched § 87(2)(b)	
E.POF Connie Duncan	Abuse: Police Officer Connie Duncan searched the vehicle in which § 87(2)(b) was an occupant.	
F.SGT Bryan Cullen	Abuse: Sergeant Bryan Cullen searched the vehicle in which § 87(2)(b) was an occupant.	
G.POF Connie Duncan	Abuse: Police Officer Connie Duncan refused to provide her name to § 87(2)(b)	
H.SGT Bryan Cullen	Abuse: Sergeant Bryan Cullen refused to provide his name to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On July 25, 2019, § 87(2)(b) filed the following complaint with the IAB Command Center and it was received by the CCRB on August 6, 2019.

At approximately 12:37 p.m. on July 23, 2019, two officers, Police Officer Connie Duncan and Sergeant Bryan Cullen from the 113<sup>th</sup> Precinct, stopped § 87(2)(b)'s vehicle on 154<sup>th</sup> Street and 134<sup>th</sup> Avenue in Queens (**Allegation A: Abuse of Authority – Vehicle Stop, § 87(2)(g)**) (**Allegation B: Abuse of Authority – Vehicle Stop, § 87(2)(g)**). Police Officer Duncan frisked and searched § 87(2)(b) during the vehicle stop (**Allegation C: Abuse of Authority – Frisk, § 87(2)(g)**) (**Allegation D: Abuse of Authority – Search of Person, § 87(2)(g)**). After she finished searching § 87(2)(b) Police Officer Duncan searched § 87(2)(b)'s vehicle (**Allegation E: Abuse of Authority – Vehicle Search, § 87(2)(g)**) (**Allegation F: Abuse of Authority – Vehicle Search, § 87(2)(g)**). Police Officer Duncan did not find any contraband on § 87(2)(b) or inside of his vehicle at any point during the incident. As the officers were leaving the incident location, § 87(2)(b) asked them for their names, but they did not provide their information to him at that time (**Allegation G: Abuse of Authority – Refusal to Provide Name, § 87(2)(g)**) (**Allegation H: Abuse of Authority – Refusal to Provide Name, § 87(2)(g)**).  
§ 87(4-b), § 87(2)(g)

No one was arrested or issued a summons during the incident. The NYPD Legal Department provided two Body-Worn Camera (BWC) videos in regards to this incident, which were recorded by each of the officers, and § 87(2)(b) also recorded a video of the incident on his cellphone (Board Review 02) (Board Review 03). All of the videos largely reflect the same events.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Bryan Cullen stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Connie Duncan stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: Police Officer Connie Duncan frisked § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Connie Duncan searched § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Connie Duncan searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (F) Abuse of Authority: Sergeant Bryan Cullen searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed by BWC footage that the officers stopped § 87(2)(b)'s vehicle, and Police Officer Duncan searched § 87(2)(b) and his vehicle (Board Review 04) (Board Review 05). In dispute is whether § 87(2)(b) committed any traffic violations prior to the incident and if his vehicle smelled like marijuana at the time it was stopped.

§ 87(2)(b) stated that while Sergeant Cullen was present, Police Officer Duncan told him that his vehicle was stopped because he was speeding and he had failed to use a turn signal (Board Review 06). § 87(2)(b) denied committing any traffic infractions prior to the vehicle stop. Police Officer Duncan also told § 87(2)(b) that his vehicle smelled like marijuana, but § 87(2)(b) said his vehicle did not smell like marijuana at the time of the incident. Police Officer Duncan instructed § 87(2)(b) to exit his vehicle and he did so. Police Officer Duncan frisked § 87(2)(b) and she searched his pockets, which caused his pants to lower and his underwear to become exposed. As Police Officer Duncan continued searching § 87(2)(b) she touched his groin area through his underwear; there was no skin-on-skin contact. Police Officer Duncan proceeded to search § 87(2)(b)'s vehicle, including the

interior and the trunk, while § 87(2)(b) remained with Sergeant Cullen. Police Officer Duncan did not find any contraband on § 87(2)(b) or inside of his vehicle during the incident. The officers left the incident location and they did not issue § 87(2)(b) any summonses.

Police Officer Duncan's BWC video shows her and § 87(2)(b) disagreeing at one minute and three seconds on whether he committed any traffic infractions and whether his vehicle smelled like marijuana (Board Review 04). At four minutes and fifty-six seconds, Police Officer Duncan begins to frisk and search § 87(2)(b)'s lower body, but she does not cause § 87(2)(b)'s pants to lower and his underwear is already exposed. Police Officer Duncan does not inappropriately touch § 87(2)(b) during the search. From six minutes and four seconds to fourteen minutes and thirty-six seconds, the footage captures Police Officer Duncan searching the interior of § 87(2)(b)'s vehicle, but the video does not clearly show any ash or other factors that are indicative of marijuana use.

Police Officer Duncan stated that she stopped § 87(2)(b)'s vehicle because § 87(2)(b) was speeding and he had failed to use a turn signal (Board Review 07). Police Officer Duncan did not recall if she and Sergeant Cullen had any discussion inside of the police vehicle prior to the vehicle stop. When Police Officer Duncan and Sergeant Cullen approached § 87(2)(b)'s vehicle, Police Officer Duncan immediately detected an odor of marijuana. Police Officer Duncan was able to notice the smell of marijuana because of her training as a police officer and her experience in conducting marijuana arrests. Police Officer Duncan did not recall if she discussed the odor of marijuana with Sergeant Cullen at any point, and besides the odor, there were no other factors that led her to believe that § 87(2)(b) may have been in possession of marijuana at the time of the incident. Police Officer Duncan searched § 87(2)(b) because he was occupying a vehicle that smelled like marijuana, which allows officers to search the vehicle and any of its occupants. After she searched § 87(2)(b) Police Officer Duncan searched § 87(2)(b)'s vehicle, but she did not find any contraband. Police Officer Duncan acknowledged that she could have issued § 87(2)(b) summonses, but she chose not to do so.

Sergeant Cullen stated that Police Officer Duncan observed § 87(2)(b) committing a traffic violation, but he did not remember if he saw it (Board Review 08). Sergeant Cullen explained that he is sometimes distracted while on patrol so he trusts his officers when they stop vehicles. Sergeant Cullen and Police Officer Duncan did not discuss the vehicle stop prior to conducting it. When the officers approached § 87(2)(b)'s vehicle, Sergeant Cullen immediately detected the odor of marijuana, but he did not discuss that with Police Officer Duncan at any point because she eventually mentioned it to § 87(2)(b). In addition, Sergeant Cullen saw ash in § 87(2)(b)'s vehicle, but he did not observe any contraband in plainview. After § 87(2)(b) exited his vehicle, Police Officer Duncan frisked him and she searched his pockets. Sergeant Cullen did not observe Police Officer Duncan grabbing § 87(2)(b) through his underwear, and Sergeant Cullen did not remember if § 87(2)(b) complained about anything while Police Officer Duncan was searching him. Police Officer Duncan also searched § 87(2)(b)'s vehicle while Sergeant Cullen remained with § 87(2)(b). No contraband was found during the incident, so Sergeant Cullen instructed Police Officer Duncan to release § 87(2)(b) with a warning in regards to the traffic violation and they left the incident location.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Connie Duncan refused to provide her name to § 87(2)(b)**

**Allegation (H) Abuse of Authority: Sergeant Bryan Cullen refused to provide his name to**

§ 87(2)(b)

§ 87(2)(b) stated that while Police Officer Duncan was searching his vehicle, he asked Sergeant Cullen for his name and he provided it. § 87(2)(b) did not ask for Police Officer Duncan's name at this time. The officers eventually returned § 87(2)(b) his license and registration, and they entered their police vehicle. § 87(2)(b) said, "So am I not going to get your name or anything?" The officers left the incident location without providing § 87(2)(b) any additional information.

Sergeant Cullen's BWC video shows that at eight minutes and eight seconds, § 87(2)(b) asks him for his name and Police Officer Duncan's name, and Sergeant Cullen provides that information to him (Board Review 05). In addition, § 87(2)(b)'s cellphone footage shows that at seventeen minutes and twenty seconds, § 87(2)(b) asks the officers for their names, but they are already inside of their police vehicle and they are reversing in order to leave the incident location (Board Review 09).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)

§ 87(2)(b)

[Redacted]

■ [Redacted]

[Redacted]

[Redacted]

- Sergeant Cullen has been a member of service for twelve years and has been a subject in ten CCRB complaints and eighteen allegations, of which one was substantiated:
  - Case #201302927 involved a substantiated allegation of refusal to provide name/shield number against Sergeant Cullen. The Board recommended instructions and the NYPD imposed no discipline.
  - § 87(2)(g) [Redacted]
- Police Officer Duncan has been a member of service for thirteen years and has been a subject in seven CCRB complaints and ten allegations, none of which were substantiated.
  - § 87(2)(g) [Redacted]

#### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) [Redacted]
- As of June 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 13).

---

Squad No.: 7

Investigator:	<u>Karina Herrera</u>	<u>Inv. Karina Herrera</u>	<u>06/03/2020</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Vanessa Rosen</u>	<u>June 11, 2020</u>
	Signature	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date